

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**UNITED STATES OF AMERICA**

**V.**

**EITHAN HAIM**

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§

**Criminal No. 24-CR-298**

**MOTION TO UNSEAL**

The defendant, Dr. Eithan Haim, respectfully moves to unseal the response of Texas Children’s Hospital (TCH) to the Department of Health and Human Services Office of Civil Rights, filed as Exhibit A to his motion for grand jury materials, Dkt. No. 84. This exhibit was filed along with others at Dkt. No. 85. Although Dr. Haim provisionally filed this under seal “out of respect for the government’s providing discovery and to minimize the effects on any trial,” Dkt. No. 84 at 6 n.2, the government has now disputed the defense’s characterization of that document in its reply in support of its motion for a gag order, Dkt. No. 129 at 5. The government has therefore increased the public interest in its contents and attenuated any harms from its public release. The defense seeks an order of the Court instead of filing the exhibit unredacted itself, even though it could under the discovery agreement with the government, out of respect for the Court and because of the nature of the dispute.

## ARGUMENT

There is no question that unsealing the record would be appropriate. “The public’s right of access to judicial records is a fundamental element of the rule of law.” *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 417 (5th Cir. 2021). Sealing a document constitutes a prior restraint, and it is constitutional “only if the government demonstrates that the protected speech restrained poses a ‘clear and present danger, or a serious or imminent threat to a protected competing interest.’” *Davis v. E. Baton Rouge Par. Sch. Bd.*, 78 F.3d 920, 928 (5th Cir. 1996) (quoting *CBS Inc. v. Young*, 522 F.2d 234, 238 (6th Cir. 1975)). There is none here. The public also “has a common law right to inspect and copy judicial records.” *Bradley ex rel. AJW v. Ackal*, 954 F.3d 216, 224 (5th Cir. 2020). This right “promotes the trustworthiness of the judicial process, curbs judicial abuses, and provides the public with a better understanding of the judicial process, including its fairness[, and] serves as a check on the integrity of the system.” *Id.* (quoting *United States v. Sealed Search Warrants*, 868 F.3d 385, 395 (5th Cir. 2017)).

Unsealing the record would serve each of these purposes. The defense did not, by provisionally filing the record under seal, concede that any of the valid rationales justified sealing, and it would have been perfectly comfortable filing the record publicly. It provisionally filed the record under seal solely out of respect for other

parties. Given that the government has now criticized the defense for misquoting the record, the above rationales all counsel entirely in favor of it being filed publicly.

Once unsealed, the record will demonstrate that the defense characterized the record correctly. TCH's statements that Dr. Haim had "approved" and "authorized" access concerned not merely the electronic medical records system but also the underlying electronic protected health information.

### **CONCLUSION**

The Court should order that Exhibit A to Dkt. No. 84, filed with other records at Dkt. No. 85, be unsealed.

Dated: December 2, 2024

Respectfully submitted,



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**ATTORNEYS FOR DEFENDANT EITHAN DAVID HAIM**

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true and correct copy of the above and foregoing document has been filed and served on December 2, 2024 using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Marcella C. Burke  
Marcella C. Burke